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Recipe for Disaster: Analyzing the Interplay between the Castle Doctrine and the Knock-and-Announce Rule after Hudson v. Michigan

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RECIPE FOR DISASTER: ANALYZING THE INTERPLAY BETWEEN THE CASTLE DOCTRINE AND THE KNOCK-AND-ANNOUNCE RULE AFTER *HUDSON V. MICHIGAN*

*G. Todd Butler**

I. INTRODUCTION

Thirteen years ago, the Supreme Court held that the Fourth Amendment to the United States Constitution requires law enforcement officers to knock and announce their presence before entering an individual's home.[1] Recently, however, the Court detached the incentive for upholding this constitutional duty by removing the threat of exclusion as a consequence of violating the knock-and-announce requirement.[2] In *Hudson v. Michigan*, a five-justice majority instead relied on civil liability and internal police discipline to deter knock-and-announce violations.[3] This Note argues that these alternative measures lack the disincentive necessary for ensuring Fourth Amendment compliance.

Further, this Note considers the implication of knock-and-announce violations in light of the Castle Doctrine. Fifteen states, over the past two years, enacted laws that presume an intruder is entering a home for purposes of inflicting bodily harm.[4] Put differently, homeowners no longer must prove a fear of imminent danger when justifying the use of deadly force.[5] The Castle Doctrine, in effect, creates a "shoot first, ask questions later" mindset,[6] which directly conflicts with the Court's "enter first, explain later" interpretation of the Fourth Amendment.

Part II of this Note examines the underlying facts of *Hudson v. Michigan*. Part III provides a brief history of the knock-and-announce rule and the exclusionary rule as a remedy for Fourth Amendment violations. Part IV details the rationale of the majority, concurring and dissenting opinions

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1. Wilson v. Arkansas, 514 U.S. 927, 929 (1995).

2. Hudson v. Michigan, 547 U.S. 586 (2006).

3. *Id.* at 597-98.

4. CHRISTOPHER REINHART, OFFICE OF LEGISLATIVE RESEARCH, CONN. GEN. ASSEMB., OLR RESEARCH REPORT: CASTLE DOCTRINE AND SELF-DEFENSE (2007-R-0052) (Jan. 17, 2007), http://www.cga.ct.gov/2007/rpt/ 2007-R-0052.htm.

5. *See* Anthony J. Sebok, *Florida's "New Stand Your Ground" Law: Why It's More Extreme Than Other States' Self-Defense Measures, And How It Got That Way*, FINDLAW'S WRIT, May 2, 2005, http://writ.news.findlaw.com/sebok/20050502.html.

6. Rene Thompson, *'Shoot First' Bill Allows Fear To Determine Value Of Human Life*, CIN. POST, March 22, 2006, at A15.

in *Hudson v. Michigan*, and Part V analyzes the case's effect on citizens and law enforcement officers in Castle Doctrine states.

II. Facts and Procedural History

The charges against Booker T. Hudson arose from evidence recovered during the execution of a search warrant in Detroit, Michigan.[7] At 3:35 p.m., on August 27, 1998, seven Detroit policemen arrived at Hudson's home with a search warrant for narcotics and weapons.[8] Officer Jamal Good, a fourteen-year veteran policeman,[9] was assigned as "shotgun man" on the raid.[10] The officers failed to knock on Hudson's door but did shout, "Police, search warrant!"[11] Three-to-five seconds later, Officer Good turned the doorknob and entered Hudson's home.[12] There, the officers discovered Hudson seated in a chair,[13] and a subsequent search of his person yielded five rocks of cocaine.[14] In other parts of the home, officers seized more cocaine and a loaded revolver.[15] The officers, based on the sum of the evidence, charged Hudson with possession of cocaine with intent to deliver and possession of a firearm during the commission of a felony.[16]

Hudson moved to suppress the evidence seized from his home, arguing that the officers violated the Fourth Amendment and Michigan law.[17] At the evidentiary hearing, Officer Good explained that, because occupants had shot at him on previous police raids, he entered without knocking.[18] The prosecutor then conceded that the officers violated the knock-and-announce rule, and the trial judge granted Hudson's motion to suppress.[19]

The Michigan Court of Appeals, on interlocutory review, reversed.[20] The appellate court relied on Michigan Supreme Court case law holding that suppression is an inappropriate remedy for knock-and-announce violations.[21] Hudson sought leave to appeal the ruling, but the Michigan Supreme Court denied the request.[22] Appropriately, the appellate court remanded the case for trial.[23]

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7. *Hudson*, 547 U.S. at 588.
8. Brief for Respondent at 1, Hudson v. Michigan, 547 U.S. 586 (2006) (No. 04-1360).
9. Brief for Petitioner at 2, Hudson v. Michigan, 547 U.S. 586 (2006) (No. 04-1360).
10. Brief for Respondent, *supra* note 8, at 1. "Shotgun man" is a term used to describe the first officer that enters the home during a police raid.
11. Brief for Petitioner, *supra* note 9, at 2.
12. Brief for Respondent, *supra* note 8, at 1.
13. *Id.*
14. *Id.*
15. Brief for Petitioner, *supra* note 9, at 3.
16. *Id.* The state charged Hudson under sections 333.7401(2)(a)(iv) and 750.227(b) of the Michigan Code.
17. *Id.*
18. *Id.*
19. *Id.*
20. Brief for Petitioner, *supra* note 9, at 4.
21. *Id.* (citing People v. Vasquez, 602 N.W. 2d 376 (Mich. 1999); People v. Stevens, 597 N.W. 2d 53, 59-62 (Mich. 1999)).
22. *Id.*
23. *Id.*

Following a bench trial, Hudson was acquitted of both charges and instead found guilty of a lesser offense: possession of less than twenty-five grams of cocaine.[24] Although sentenced to eighteen months probation,[25] Hudson appealed the conviction to the Michigan Court of Appeals on the basis that exclusion was the proper remedy for the officer's unlawful entry.[26] The court affirmed the conviction, however, explaining that "regardless of the correctness of [prior Michigan Supreme Court] decisions[,] . . . those cases are binding on this [c]ourt."[27] The Michigan Supreme Court subsequently declined review, thereby reaffirming its prior decisions.[28]

The United States Supreme Court granted certiorari to decide whether suppression is an appropriate remedy for knock-and-announce violations.[29] On January 9, 2006, the Court held oral argument.[30] Associate Justice Sandra Day O'Connor participated, but Congress confirmed Justice Samuel Alito as her replacement before the case was decided.[31] On May 18, 2006, the parties argued the case for a second time—this time in front of Justice Alito—because the other justices were split four-to-four.[32]

III. Background and History of the Law

The Fourth Amendment to the United States Constitution provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . ."[33] The knock-and-announce rule's place within this constitutional framework requires an evaluation of both the Fourth Amendment *right* and that right's ancillary *remedy*.

A. The Knock-and-Announce Rule's Journey Towards Constitutional Status

Even though evidence suggests that the knock-and-announce requirement dates back to 1275, a 1603 English court decision is regarded as "the judicial source of the common-law standard."[34] In *Semayne's Case*, the

24. *Id.*

25. *Id.*

26. Brief for Petitioner, *supra* note 9, at 5.

27. People v. Hudson, No. 246403 (Mich. App. June 17, 2004).

28. Brief for Petitioner, *supra* note 9, at 4.

29. *Hudson*, 547 U.S. at 589.

30. Transcript of Oral Argument, Hudson v. Michigan, 547 U.S. 586 (2006) (No. 04-1360), *available at* 2006 WL 88656.

31. Samuel Alito, Encyclopedia Article, http://encarta.msn.com/encyclopedia_701766459/Samuel_Alito. html.

32. Transcript of Oral Argument, *supra* note 30, *available at* 2006 WL 1522979. The law professor that argued Hudson's case in front of the Supreme Court, David Moran, contends that the case's outcome turned on Justice Alito's appointment. In fact, Moran suggests that "the case almost certainly would have prevailed" if Justice O'Connor had remained on the bench. 2006 Cato Sup. Ct. Rev. 283, 299.

33. U.S. Const. amend. IV.

34. Wilson v. Arkansas, 514 U.S. 927, 932 n.2 (1995).

King's Bench ruled that a sheriff was authorized to break into an occupant's home, but before doing so, "he ought to signify the cause of his coming" and make a request to open the door.[35]

American courts, recognizing the importance of notification, eventually adopted the common law principle mandated in the English courts.[36] A Connecticut state court decision was the first United States case to incorporate the knock-and-announce requirement.[37] In *Read v. Case*, a bailsman assisted the sheriff in breaking down the door. A jury subsequently found the bailsman liable for trespass damages.[38] On appeal, the Connecticut Supreme Court of Errors noted that the bailsman failed to "signify the cause of his coming, and request admission . . . ."[39]

After *Read*, American courts continued to require law enforcement officers to provide notification,[40] and the majority of states codified the knock-and-announce principle under statutory law.[41] Furthermore, in 1917, Congress passed what is now known as the federal knock-and-announce statute:

> The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute a search warrant, if, *after notice of his authority and purpose*, he is refused admittance or when necessary to liberate himself or a person aiding him in execution of the warrant.[42]

Courts have interpreted both the federal and state codifications as incorporating the common law principle, including the rule's exceptions.[43]

The United States Supreme Court directly evaluated whether the Constitution requires the knock-and-announce rule in *Wilson v. Arkansas*.[44] There, the petitioner appealed a drug conviction and argued that law enforcement officers violated the "reasonableness clause" of the Fourth Amendment by failing to knock and announce.[45] The Court reversed the

35. *Id.* at 931.

36. *Id.* at 933.

37. Read v. Case, 4 Conn. 166 (1822).

38. *Id.*

39. *Id.*

40. *E.g. Wilson*, 514 U.S. 927; Sabbath v. United States, 391 U.S. 585 (1968); Wong Sun v. United States, 371 U.S. 471 (1963); Ker v. California, 374 U.S. 23 (1963); Miller v. United States, 357 U.S. 301 (1958).

41. Robert Driscoll, *Unannounced Police Entries and Destruction of Evidence After Wilson v. Arkansas*, 29 COLUM. J.L. & SOC. PROBS. 1, 10 (1995).

42. 18 U.S.C. § 3109 (2006).

43. *E.g. Wilson*, 514 U.S. at 936 (explaining that police need not knock and announce when there is a threat of physical violence or where there is reason to believe evidence will be destroyed); Richards v. Wisconsin, 520 U.S. 385, 394 (1997) (explaining police need knock and announce is not necessary if it would be futile).

44. 514 U.S. 927 (1995).

45. *Id.* at 930.

Arkansas Supreme Court's judgment and held that the knock-and-announce rule "is an element of the reasonableness inquiry under the Fourth Amendment."[46] Even so, the *Wilson* respondent argued that this determination was not the end of the matter because, even though the knock-and-announce rule is constitutionally required, the Constitution does not compel suppression as a remedy for a knock-and-announce violation.[47] The Court, however, declined to address this argument, using a footnote to explain that "this remedial issue was not addressed by the court below and is not within the narrow question on which we granted certiorari . . . ."[48]

B. The Exclusionary Rule As A Constitutional Remedy

The exclusionary rule is the chief remedy for Fourth Amendment violations.[49] In short, the rule protects constitutional guarantees by suppressing evidence seized in an unreasonable search or seizure.[50] Although the remedy is well rooted in constitutional jurisprudence, controversy plagues its entire existence. Pervasive confusion surrounding the rule's application is evident from the Supreme Court's wavering discussions on when suppression is an appropriate remedial measure for constitutional violations.

The Supreme Court created the exclusionary rule in the seminal decision of *Weeks v. United States*.[51] In *Weeks*, the defendant's conviction turned on evidence seized in the course of an unlawful search by federal authorities.[52] In an effort to protect "the constitutional rights of the accused," the Court suppressed the unlawfully seized papers.[53] Justice Day, writing for a unanimous bench, explained that an opposite result would require the Fourth Amendment to "be stricken from the Constitution" because it would have "no value."[54]

The Court, despite its stated concern for protecting individual rights, initially refused to extend the exclusionary rule to state prosecutions.[55] In *Wolf v. Colorado*, the Court concluded that Fourth Amendment protection applies to the states through the Due Process Clause of the Fourteenth Amendment.[56] In any event, the Court explained that the exclusionary rule "was not derived from the explicit requirements of the Fourth Amendment . . . ."[57] States, as a result, were not required to suppress evidence obtained in an unreasonable search or seizure, but instead were free to

46. *Id.* at 934.
47. *Id.* at n.4.
48. *Id.*
49. 68 AM. JUR. 2D *Searches and Seizures* § 3 (2006).
50. *Id.*
51. 232 U.S. 383 (1914).
52. *Id.* at 398.
53. *Id.*
54. *Id.* at 393.
55. Wolf v. Colorado, 338 U.S. 25 (1949).
56. *Id.* at 27-28.
57. *Id.* at 28.

fashion other remedies, including private action and internal discipline, that the Court deemed "equally effective" deterrents.[58]

This position, however, was reconsidered twelve years later.[59] In *Mapp v. Ohio*, the Court acknowledged that other remedies had proved unsuccessful in deterring law enforcement officers from infringing constitutional rights.[60] Overruling *Wolf v. Colorado*, the Court suppressed unlawful evidence seized by Ohio police and held that the exclusionary rule is applicable to the states.[61] In particular, the Court stated that suppression was "constitutionally necessary" because "[t]o hold otherwise is to grant the right but in reality to withhold its privilege and enjoyment."[62]

Consistent with its unpredictable stance on the exclusionary rule, the Court subsequently undercut the "constitutionally necessary" language from *Mapp*.[63] In *United States v. Calandra*, the Court rejected a constitutional mandate by referring to the exclusionary rule as a "judicially created remedy designed to safeguard Fourth Amendment rights . . . through its deterrent effect . . . ."[64] The Court, operating under this idea, refused to confine the rule's scope to categorical circumstances.[65] Rather, the Court adopted a balancing test that weighs the social costs of applying the rule with the benefits gained by deterring police misconduct.[66]

After the Court incorporated the knock-and-announce rule into the Fourth Amendment reasonableness inquiry in *Wilson*, the following question remained unanswered: Is the exclusionary rule the appropriate remedy for a knock-and-announce violation? The Sixth and Eighth Circuit Courts of Appeals and the Arkansas Supreme Court answered the question in the affirmative, holding that suppression is an appropriate remedy.[67] To the contrary, the Seventh Circuit Court of Appeals and the Michigan Supreme Court held that suppression is not an appropriate remedy.[68] The Supreme Court used *Hudson v. Michigan* as a vehicle to resolve the conflict.

IV. THE INSTANT CASE

The Court divided sharply on the issue of whether suppression is the proper remedy for a knock-and-announce violation. In a 5-4 pronouncement,[69] the Court affirmed Hudson's conviction, holding "that an impermissible manner of entry does not necessarily trigger the exclusionary

58. *Id.* at 31.
59. Mapp v. Ohio, 367 U.S. 643 (1961).
60. *Id.* at 652.
61. *Id.* at 655.
62. *Id.* at 656.
63. United States v. Calandra, 414 U.S. 338 (1974).
64. *Id.* at 348.
65. *Id.* at 349.
66. *Id.*
67. United States v. Dice, 200 F.3d 978 (6th 2000); United States v. Marts, 986 F.2d 1216 (8th 1993); Mazepink v. State, 987 S.W. 2d 648 (Ark. 1999).
68. United States v. Langford, 314 F.3d 892 (7th 2002); *Vasquez*, 602 N.W. 2d 376; *Stevens*, 597 N.W. 2d at 59-62.
69. *Hudson*, 547 U.S. at 587.

rule."[70] Justice Scalia authored the four-part opinion of the Court, in which Chief Justice Roberts, Justice Alito, and Justice Thomas joined.[71] Justice Kennedy joined Parts I, II, and III and authored a separate opinion concurring in part and concurring in judgment.[72] Justice Breyer authored a dissenting opinion, in which Justices Ginsburg, Souter, and Stevens joined.[73]

A. The Opinion of the Court

The Court set the stage in *Hudson v. Michigan* by discussing the difficulty police officers face in adhering to the knock-and-announce requirement.[74] Specifically, Justice Scalia focused on the vagueness of the Court's "reasonable wait time" standard that governs the amount of time police must wait to enter after knocking.[75] Justice Scalia explained that police officers have the complex task of determining "[h]ow many seconds' wait are too few[.]"[76] The Court, presumably, took the opportunity to establish from the outset that any remedy for a knock-and-announce violation must consider the difficulty of applying the rule.

Next, the Court laid the foundation for a narrow application of the exclusionary rule. Justice Scalia acknowledged that the Court's decision in *Mapp v. Ohio* suggested a wide exclusionary scope but dismissed that approach as "expansive dicta."[77] Broad application, Justice Scalia opined, was rejected in the Court's post-*Mapp* ruling in *United States v. Calandra*.[78] Under this view, he concluded that the exclusionary rule is best characterized as a "last resort" instead of a "first impulse."[79]

After planting this seed, the Court focused on three concepts central to the issue presented. First, the Court examined the level of attenuation between knock-and-announce violations and evidence yielded from the following search.[80] Second, the Court discussed how the social costs of suppressing evidence balance against the benefits of deterring unlawful entry.[81] Third, the Court looked at prior precedent that supported non-application of the exclusionary rule.[82] Each is discussed in turn.

1. Attenuation

Although both parties and amici focused extensively on the issue of causation in their briefs and at oral arguments, the Court quickly affirmed

70. *Id.* at 602.
71. *Id.* at 587.
72. *Id.*
73. *Id.*
74. *Id.* at 590.
75. *Hudson*, 547 U.S. at 590.
76. *Id.*
77. *Id.*
78. *Id.*
79. *Id.*
80. *Id.* at 593.
81. *Hudson*, 547 U.S. at 594.
82. *Id.* at 599.

that "but-for" causation is indeed a prerequisite for suppression.[83] Without expanding on its reasoning about the necessity of causation, the Court turned to its existence in this case.[84] Causation was indeed lacking because the officers obtained a lawful search warrant for Hudson's home.[85] Thus, the evidence leading to Hudson's conviction was not causally related to the officer's premature entry because "the police would have executed the warrant they had obtained, and would have discovered the gun and drugs."[86]

Even though the Court found "but-for" causation lacking under these facts, Justice Scalia explained that evidentiary exclusion is inappropriate, even with a causal link, if the link is "too attenuated to justify exclusion."[87] Simply put, attenuation can occur when "the interest protected by the constitutional guarantee that has been violated would not be served by suppression of the evidence obtained."[88]

Accordingly, the Court's analysis shifted to the interests protected by the knock-and-announce rule and the exclusionary rule.[89] Three interests are protected by the knock-and-announce rule: (1) allowing occupants to comply peaceably with the law by voluntarily permitting officers entry into the home; (2) avoiding the unnecessary destruction of property caused by forcible entry; and (3) giving individuals the "opportunity to prepare themselves" for the law enforcement officer's entry.[90] Contrarily, the exclusionary rule protects the Fourth Amendment by excluding "the fruits of unlawful warrantless searches."[91] As a result of these differing interests, the Court concluded that the causal link between the two rules stretches too far.[92]

2. Fourth Amendment Balancing Test

The Court then discussed whether the "deterrence benefits [of applying the exclusionary rule] outweigh its substantial social costs."[93] Starting with social costs, the Court explained that the exclusionary rule always presents the risk of allowing dangerous criminals to roam free in society.[94] In fact, Justice Scalia explained that the suppression of evidence for a knock-and-announce violation provides a "get-out-of-jail-free card" for criminals.[95]

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83. *Id.* at 592.
84. *Id.*
85. *Id.*
86. *Id.*
87. *Hudson*, 547 U.S. at 592.
88. *Id* at 593.
89. *Id.* at 593-94.
90. *Id.*
91. *Id.*
92. *Id.*
93. *Hudson,* 547 U.S. at 595-96.
94. *Id.*
95. *Id.* at 595.

Judicial economy also served as a basis for the Court's holding.[96] Justice Scalia feared that future litigants would saturate the court system with knock-and-announce claims if the remedy were premised on the exclusion of evidence.[97] Such a litigation flood was troubling, in his view, because the vagueness of the knock-and-announce rule's "reasonable wait time" standard makes it difficult for trial judges to determine when a violation actually occurred.[98] Moreover, the fact-intensive nature of the inquiry makes knock-and-announce violations "even more difficult for an appellate court to review."[99]

Wrapping up the social-cost inquiry, Justice Scalia predicted that police would "wait longer than the law requires" if a knock-and-announce violation resulted in the exclusion of evidence.[100] The consequences of delayed entry are twofold. By waiting longer, police face an increased risk of physical altercations with the home's occupants.[101] In addition, Justice Scalia warned that occupants would have a greater opportunity to destroy evidence if officers waited too long.[102] The Court, considering both possibilities, decided that excluding evidence obtained after the violation of the knock-and-announce rule constituted over-deterrence.[103]

Justice Scalia then set up the deterrence side of the balancing test by asking whether there is ever a motivation for police officers to violate the knock-and-announce rule.[104] The Court used a comparison between obtaining evidence without a warrant and violating the knock-and-announce rule to conclude that police officers have little incentive to violate the latter requirement.[105] Justice Scalia further explained that "ignoring the knock-and-announce rule can realistically be expected to achieve absolutely nothing except the prevention of destruction of evidence and the avoidance of life-threatening resistance by occupants of the premises . . . ."[106] In contrast, violating the warrant requirement could yield "incriminating evidence that could not otherwise be obtained."[107] The Court, therefore, reasoned that the lack of incentive for violating the knock-and-announce rule diluted the "deterrence benefits" portion of the balancing test.[108]

In the same vein, Justice Scalia explained that two other devices provide satisfactory police deterrence: 42 U.S.C. § 1983 actions and internal police discipline.[109] Justice Scalia suggested that § 1983 actions are readily

96. *Id.*
97. *Id.*
98. *Id.*
99. *Hudson,* 547 U.S. at 595.
100. *Id.*
101. *Id.*
102. *Id.*
103. *Id.*
104. *Id.*
105. *Hudson,* 547 U.S. at 595-96.
106. *Id.*
107. *Id.*
108. *Id.*
109. *Id.* at 597-98.

available to deter police misconduct.[110] He provided no citations to § 1983 cases that produced significant monetary damages, but did insinuate that settlement opportunities and the availability of attorneys' fees make the actions enticing for lawyers.[111] Also, Justice Scalia noted that the qualified immunity defense is not prohibiting "colorable" civil actions from going forward in the lower courts.[112] Lastly, the Court ended its balancing test by explaining that internal police discipline is an effective deterrent.[113] Without offering any empirical data, Justice Scalia attributed his conclusion to the "increasing professionalism of police forces."[114]

3. Prior Precedent

Justice Scalia used the reasoning from three of the Court's prior decisions to determine that suppression is inappropriate in the knock-and-announce context.[115] Justice Scalia led with *Segura v. United States*. In *Segura*, the Court did not exclude evidence obtained after police unlawfully entered a home and waited inside while securing a search warrant.[116] Justice Scalia explained that the Court "distinguished the effects of the illegal entry from the effects of the illegal search" and that "it would be bizarre to treat more harshly the actions in this case . . . ."[117]

Next, Justice Scalia turned to the Court's opinion in *New York v. Harris*.[118] There, the Court did not exclude a defendant's incriminating statement obtained after police unlawfully entered his home and arrested him without a warrant.[119] Justice Scalia explained that the illegal arrest "was not the fruit of the fact that the arrest was made in the house rather than somewhere else."[120] Likewise, Justice Scalia opined that the unlawful entry into Hudson's home "was not the fruit of the fact that the entry was not preceded by knock and announce."[121]

Justice Scalia ended his opinion by focusing on *United States v. Ramirez*.[122] In *Ramirez*, police obtained a warrant and broke in the respondent's window.[123] Although the Court determined the police's actions were reasonable under the circumstances, Justice Scalia explained that the *Ramirez* opinion recognized that "the causal relationship between the breaking of the window and the discovery of the guns" would have been examined if the Court had found the police's actions to be unreasonable.[124]

110. *Id.* at 597.
111. *Hudson*, 547 U.S. at 597.
112. *Id.* at 598.
113. *Id.*
114. *Id.*
115. *Id.* at 598-602.
116. *Id.* at 600.
117. *Hudson*, 547 U.S. at 600.
118. *Id.*
119. *Id.*
120. *Id.*
121. *Id.*
122. *Id.* at 602.
123. *Hudson*, 547 U.S. at 602.
124. *Id.*

Thus, Justice Scalia determined that *Ramirez*, when read along side *Harris* and *Segura*, lent support to his conclusion that evidence obtained after a knock-and-announce violation is too attenuated to justify suppression.[125]

B. Justice Kennedy's Concurrence

Justice Kennedy wrote separately to convey three key points.[126] First, Justice Kennedy made it apparent that he did not question the importance of the knock-and-announce rule.[127] This is clear from his statement that the case should not be read to suggest that the knock-and-announce rule "is trivial or beyond the law's concern."[128]

Second, Justice Kennedy explained that attenuation is the primary reason for admitting evidence after a knock-and-announce violation.[129] In his view, prior precedent dictates that a sufficient causal link is a prerequisite to applying the exclusionary rule.[130] This prerequisite is lacking in the knock-and-announce context because "the failure to wait at the door cannot properly be described as having caused the discovery of evidence."[131]

Justice Kennedy ended his short concurrence by vaguely explaining his decision not to join Part IV of Justice Scalia's opinion.[132] In his view, *Segura* and *Harris* did not "have as much relevance" as Justice Scalia appeared to conclude.[133]

C. The Dissent

Justice Breyer laid the groundwork for his dissenting opinion with a simple syllogism.[134] First, he noted *Wilson*'s holding that the knock-and-announce rule is part of the Fourth Amendment reasonableness inquiry.[135] Second, he explained that the Court's prior decisions dictate that unreasonable searches and seizures warrant the suppression of evidence.[136] Since the government conceded that the police officers in the instant case violated the knock-and-announce rule, Justice Breyer used "elementary logic" to deduce that the subsequent search was unreasonable, and thus, unconstitutional.[137]

Although he admitted that the exclusionary rule's application involved a separate inquiry from whether a Fourth Amendment violation occurred,

125. *Id.*
126. *Id.* (Kennedy, J., concurring).
127. *Id.*
128. *Id.*
129. *Hudson*, 547 U.S. at 603-04 (Kennedy, J., concurring).
130. *Id.*
131. *Id.*
132. *Id.*
133. *Id.*
134. *Id.* at 604-08. (Breyer, J., dissenting).
135. *Hudson*, 547 U.S. at 604-05. (Breyer, J., dissenting).
136. *Id.* at 608.
137. *Id.*

Justice Breyer pointed out that suppression had always been used to remedy such violations unless the admissibility of evidence was being questioned in a proceeding other than a criminal trial or unless its application would fail to produce appreciable deterrence.[138] In the case at bar, the evidence in question plainly pertained to a criminal trial and, as Justice Breyer later explained, the exclusionary rule is key in deterring knock-and-announce violations.[139] Because neither of the exclusionary rule's categorical exceptions applied in the knock-and-announce context, Justice Breyer turned his attention to combating the premises relied on by the majority.[140]

In terms of causation, Justice Breyer found a sufficient causal link between the knock-and-announce violation and the evidence seized in the subsequent search.[141] He explained that "entry was a necessary condition of [police] presence in Hudson's home; and their presence in Hudson's home was a necessary condition of their finding and seizing the evidence."[142] In other words, the officer's actions were unreasonable because the manner of entry was inseparable from the subsequent search.[143]

Consistent with this theme, Justice Breyer rejected the majority's understanding of the word "attenuation."[144] In fact, he argued that prior precedent offered a different meaning of the term—namely, attenuation occurs if "the discovery of evidence has come about long after the unlawful behavior took place or in an independent way . . . ."[145] Applying this definition, Justice Breyer concluded that attenuation did not break the causal connection between the knock-and-announce violation and the evidence seized in the subsequent search.[146]

While Justice Scalia applied the Fourth Amendment balancing test by starting with social costs, Justice Breyer turned first to deterrence.[147] Considering factors such as time, recoverable damages and money spent on litigation, Justice Breyer argued that § 1983 suits are an insufficient deterrence.[148] Also, he swiftly dismissed the notion that "better trained police" provide adequate deterrence.[149]

Turning to social costs, Justice Breyer argued that this case parallels any Fourth Amendment case.[150] The social costs of setting the guilty free, flooding the courts, and making judges make difficult decisions are present in many cases.[151] Thus, Justice Breyer explained that the majority argued

138. *Id.* at 610-11.
139. *Id.* at 612.
140. *Id.*
141. *Hudson,* 547 U.S. at 614 (Breyer, J., dissenting).
142. *Id.*
143. *Id.*
144. *Id.* at 619-20.
145. *Id.*
146. *Id.*
147. *Hudson,* 547 U.S. at 609 (Breyer, J., dissenting).
148. *Id.* at 609-10.
149. *Id.* at 610.
150. *Id.* at 614.
151. *Id.*

against the exclusionary rule itself, not its application in the knock-and-announce context.[152]

Finally, Justice Breyer ended his opinion by dismissing the majority's doctrinal argument.[153] In Justice Breyer's view, *Segura*, *Harris*, and *Ramirez* offered little support for the majority's holding.[154] Each case contained factual circumstances easily distinguishable from Hudson's situation.[155] Consequently, Justice Breyer concluded that the majority produced a decision not "firmly grounded in logic, in history, in precedent, [or] in empirical fact."[156]

V. ANALYSIS

The Court's decision in *Hudson v. Michigan* raises numerous questions: What impact will the decision have on the exclusionary rule's future application in other contexts?[157] Is the exclusionary rule still the appropriate remedy for violations under the federal knock-and-announce statute?[158] Will individual states determine that their respective state constitutions mandate the exclusionary rule's application for knock-and-announce violations?[159] Each question continues to receive significant scholarly attention in the wake of the Court's ruling in *Hudson v. Michigan*.[160]

In search of novelty, this Note focuses on an implication of the case receiving far less attention: the interplay between the current status of the

152. *Id.*

153. *Hudson,* 547 U.S. at 624-25 (Breyer, J., dissenting).

154. *Id.*

155. *Id.* at 624-28.

156. *Id.* at 630.

157. David Moran suggests that Justice Scalia's opinion in *Hudson* was a direct attack on the exclusionary rule. He argues that the exclusionary rule will be overruled in the future if "one more like-minded justice joins the Court." 2006 Cato Sup. Ct. Rev. 283, 307-09. Professor Craig Bradley contends that Justice Kennedy's concurrence in *Hudson* signaled that the Court does not yet have the necessary votes to overturn the exclusionary rule, but that its fate may not be safe in the future if the makeup of the Court changes. *Mixed Messages on the Exclusionary Rule*, TRIAL, Dec. 2006, at 55. Professor Ashdwon argues that the Court's broad exclusionary rule analysis in *Hudson* suggests that it could be overturned in future cases. 67 U. PITT. L. REV. 753 (2006). Professor Henry Fradella analyzed other legal scholarship on the *Hudson* case and acknowledged the uncertainty of the exclusionary rule's future. 43 NO. 1 CRIM. LAW BULLETIN 6 (2006). A student author, writing for the Harvard Law Review, contends that the Supreme Court may use the rationale set forth in *Hudson* to eliminate the exclusionary rule in future cases. *The Supreme Court, 2006 Term – Leading Cases*, 120 HARV. L. REV. 173, 174 (2006).

158. Professor Orin Kerr and David Moran debated whether the exclusionary rule is still the appropriate remedy for violations of the federal knock-and-announce statute. Professor Kerr argues that the exclusionary rule still applies to federal violations because the Court did not overrule *Miller v. United States* and *Sabbath v. United States* in the *Hudson* decision. Opposing this view, Moran was willing to bet Professor Kerr $500 that the exclusionary rule no longer remains a viable federal remedy for federal knock-and-announce violations. *Remedies for Knock-and-Announce Violations in Federal Court After Hudson v. Michigan*, http://www.orinkerr.com/2006/07/11/remedies-for-knock-and-announce-violations-in-federal-court-after-hudson-v-michigan/ (last visited February 21, 2007).

159. *See* Sheryl Gordon McCloud, *Will State or Federal Constitutional Law Save the 'Knock, Announce, & Wait' Rule from a Drug Exception?*, http://www.nacdl.org/CHAMPION/ARTICLES/97apr01.htm.

160. *Supra* notes 157, 158, 159.

knock-and-announce rule and the Castle Doctrine. Law enforcement officers no longer have any incentive to comply with the knock-and-announce rule after the Court's ruling in *Hudson v. Michigan*, on the one hand, and citizens in Castle Doctrine states are literally armed with free reign to use deadly force against suspected intruders without threat of criminal or civil liability, on the other hand. This Note argues that the interplay between the two doctrines will exacerbate violence among law enforcement officers and homeowners in Castle Doctrine states.

A. Why Knock Anymore?

Justice Breyer's dissenting opinion in *Hudson v. Michigan* aptly noted that "the Court destroy[ed] the strongest legal incentive to comply with the Constitution's knock-and-announce requirement" when it refused to remedy the violation with the exclusionary rule.[161] While Justice Scalia offered several deterrent substitutes, each is insufficient to ensure law enforcement compliance.

Four obstacles impede civil liability from deterring non-compliance. First, it is unlikely that a criminal defendant would file a lawsuit over a knock-and-announce violation because there is no right to counsel in civil suits.[162] Second, the criminal defendant would face difficulty obtaining private counsel because such a case is unattractive considering the "expensive [and] time-consuming" nature of the suit when compared with the nominal recovery that would probably be awarded.[163] Third, recovery is unlikely, even if the criminal defendant does file a suit, because officers are often shielded by the doctrine of qualified immunity.[164] Fourth, research suggests that jurors favor police officers in civil actions, especially where the plaintiff is an individual convicted of a crime.[165] For these reasons, civil liability, at best, is a dubious deterrent substitute.

Likewise, internal police procedures are inadequate to deter non-compliance with the knock-and-announce rule. Although Justice Scalia came to the opposite conclusion after noting the "increasing professionalism" of police officers,[166] he failed to discern the principle reason why this increasing professionalism actually exists. As one commentator noted, "the increasing professionalism of police departments that has resulted in more effective internal discipline was itself a result of the exclusionary rule."[167] It follows that if the underpinning is removed, the increasing professionalism will also disappear.[168]

161. 547 U.S. at 605 (Breyer, J., dissenting).

162. Amy Garzon, Comment, *United States v. Langford*, 48 N.Y.L. SCH. L. REV. 353, 368 (2004).

163. *Hudson*, 547 U.S. at 610 (Breyer, J., dissenting).

164. *See* Wilson v. Layne, 526 U.S. 603 (1999).

165. Garzon, *supra* note 162.

166. *Hudson*, 547 U.S. at 598 (Breyer, J., dissenting).

167. *The Supreme Court, 2006 Term – Leading Cases*, 120 HARV. L. REV. 173, 182 (2006).

168. *Id.*

Moreover, any argument that police still have an incentive to comply with the knock-and-announce rule because policemen fear that homeowners will mistake them for an intruder is unpersuasive. Even if some officers believe that notification provides protection, it is not the prevailing attitude of law enforcement officers. Justice Breyer recognized this reality in his dissenting opinion: "[D]rug enforcement authorities believe that safety for the police lies in a swift, surprising entry with overwhelming force—not in announcing their official authority."[169] As further support, the prodigious number of knock-and-announce violations that occur each year indicate a police preference for surprise entry.[170]

Plainly, the problems surrounding each deterrent substitute confirm that there is no longer an incentive for law enforcement officers to comply with the knock-and-announce rule. Indiana Law Professor Craig Bradley's prophetic statement underscores the point:

> I have no doubt that days after this decision was rendered, memos (or at least phone calls, for those who didn't want to encourage Fourth Amendment violations in writing) went out from police department lawyers around the country, telling police officers, "You no longer have to knock and announce."[171]

As this remark suggest, the Supreme Court removed all "bite" from the knock-and-announce rule by holding that a violation does not compel evidentiary exclusion.

B. The Deadly Ingredients: Knock-and-Announce Rule Meets Castle Doctrine

On April 26, 2005, Florida became the first state to enact a Castle Doctrine law.[172] The law's purpose is to provide immunity from civil and criminal liability to "citizens who use deadly force in self-defense."[173] Despite much controversy, fourteen states passed similar statutes in the two years following Florida's enactment.[174]

The Castle Doctrine establishes the presumption that a homeowner's use of force against an intruder is necessary to protect the homeowner's safety.[175] Under prior Florida law, homeowners were required to prove a fear of imminent danger to establish justification for the use of deadly

169. *Hudson*, 547 U.S. at 609 (Breyer, J., dissenting).

170. *See* Craig Hemmens & Chris Mathias, *United States v. Banks: The "Knock-and-Announce Rule" Returns to the Supreme Court*, 41 IDAHO L. REV. 1, 12 (2004).

171. *Mixed Messages on the Exclusionary Rule*, TRIAL, Dec. 2006, at 57.

172. Alan Korwin, *Florida Castle Doctrine Protects the Innocent*, http://www.gunlaws.com/Florida-Castle Doctrine.htm (last visited Mar. 08, 2007).

173. Sebok, *supra* note 5.

174. CHRISTOPHER REINHART, OFFICE OF LEGISLATIVE RESEARCH, CONN. GEN. ASSEMB., OLR RESEARCH REPORT: CASTLE DOCTRINE AND SELF-DEFENSE (2007-R-0052) (Jan. 17, 2007), http://www.cga.ct.gov/2007/rpt/ 2007-R-0052.htm.

175. FLA. STAT. ANN. § 776.013 (2006); MISS. CODE ANN. § 97-3-15 (2006).

force.[176] But under the revised version of the Florida Code, "[a] person who unlawfully and by force enters or attempts to enter a person's dwelling . . . is presumed to be doing so with the intent to commit an unlawful act involving force or violence[.]"[177] Thus, the homeowner "has no duty to retreat and has the right to stand his or her ground and meet force with force, including deadly force[.]"[178]

Importantly, critics insist that the Castle Doctrine creates a "trigger-happy" mentality in citizens' minds.[179] The laws receive extensive media coverage and the phrase "shoot first, ask questions later" is often used to describe the Castle Doctrine.[180] One commentator noted that "[the doctrine] sends a very confusing message to the citizens . . . about when they can use lethal force with impunity."[181]

Homeowners' perception is important because the Castle Doctrine does not provide absolute immunity from liability. For example, Florida revokes the "necessary force" presumption in three situations: (1) when the homeowner is engaged in unlawful activity inside the home; (2) when the homeowner uses deadly force against a cohabitant; (3) and when the homeowner uses deadly force against a law enforcement officer.[182] Each exception applies even when a homeowner possesses a subjective belief that the individual entering the home is an intruder.[183]

The law enforcement exception is especially troubling because its application varies from state to state. In Mississippi, for instance, a homeowner does not receive the benefit of the "necessary force" presumption if the homeowner uses force against an intruder that is an on-duty police officer.[184] Indeed, by its very terms, the presumption does not apply when an intruder "is a law enforcement officer engaged in the performance of his official duties[.]"[185] Presumably, this provision applies even if the officer violates the knock-and-announce rule.

Conversely, Florida law still recognizes the presumption when a homeowner uses force against an officer who violates the knock-and-announce rule. In fact, Florida law provides the presumption if the officer does not "identif[y] *himself in accordance with any applicable law*."[186] Thus, the plain language of each statute reveals that a homeowner in Florida receives the benefit of the presumption if a police officer fails to knock-and-announce, but a Mississippi homeowner does not receive the same treatment under similar factual circumstances.

176. Sebok, *supra* note 5.
177. FLA. STAT. ANN. § 776.013.
178. *Id.*
179. Excerpts from Press Coverage of Florida's "Shoot First" Law, http://www.shootfirstlaw.org/press/ (last visited Feb. 24, 2007).
180. *Id.*
181. Sebok, *supra* note 5.
182. FLA. STAT. ANN. § 776.013.
183. *Id.*
184. MISS. CODE ANN. § 97-3-15.
185. *Id.*
186. FLA. STAT. ANN. § 776.013 (emphasis added).

This inconsistency is problematic considering the overall interplay between the Castle Doctrine and the knock-and-announce rule. As demonstrated below, it is easy to imagine a situation where a law enforcement officer and an unassuming homeowner engage in a violent interaction because of an officer's failure to knock and announce. Castle Doctrine detractors suggest that such a situation would create a "bad legal tangle for juries when defendants can claim they thought the officer was an unknown intruder against whom they had the right to shoot on sight."[187]

Certainly, the current legal climate surrounding the knock-and-announce rule contributes further to this possibility. Justice Brennan explained forty-nine years ago that the knock-and-announce rule is a safeguard for "police who might be mistaken for prowlers and be shot down by a fearful householder."[188] The safeguard, however, provides little protection when police officers have no incentive to follow the knock-and-announce rule and when citizens reside in Castle Doctrine states. The result, therefore, is clear: The two doctrines are on a collision course.[189]

C. Looking At the Past to Predict the Future

Two unfortunate situations illuminate the risks created because of the interaction between the knock-and-announce rule and the Castle Doctrine. On October 1, 2000, a police raid in Lebanon, Tennessee turned deadly.[190] While attempting to execute a drug warrant, five police officers approached the wrong house.[191] John Adams, a sixty-four year old man, lived inside the house with his wife Loraine.[192] Loraine heard a noise outside the house and told her husband to grab his gun because she thought the officers were criminals who were there to invade their home.[193] The police failed to identify themselves before bursting into the Adams' home, and Mr. Adams fired shots at the officers upon entry.[194] The police officers returned fire on Mr. Adams.[195]

The consequences of the police officer's failure to announce their presence proved devastating. Loraine Adams lost her husband.[196] The officer

187. Posting of Nathan Newman, http://www.tpmcafe.com/blog/coffeehouse/2006/jun/15/no_knock_meet_castle_doctrine (June 15, 2006) (last visited Mar. 08, 2007).

188. *Miller*, 357 U.S. at 313 n.12.

189. Newman, *supra* note 187.

190. *Man Slain In Mistaken Police Raid Drug Informant Gave Officers Wrong Address*, CHI. TRIB., Oct. 8, 2000, at C10.

191. *Id.*

192. *Id.*

193. *Id.*

194. *Id.*

195. *Id.*

196. *Man Slain In Mistaken Police Raid Drug Informant Gave Officers Wrong Address*, CHI. TRIB., Oct. 8, 2000, at C10.

who fired the shots was tried for reckless homicide.[197] The Lebanon, Tennessee community lost all faith in their police department.[198] Each consequence was the result of what the Lebanon Police Chief called a "costly mistake."[199]

A Mississippi police raid provides a similar example of tragedy. On December 26, 2001, police officers obtained a warrant to search a duplex in Prentiss, Mississippi.[200] The warrant permitted the officers to search each apartment in the duplex; however, the warrant contained only the name of the individual in the first apartment, Jamie Smith.[201] After executing the warrant against Smith, the officers proceeded to the second apartment.[202] There, Cory Maye was sleeping with his one-year old daughter when he was awakened by the sound of someone trying to kick in his front door.[203] Maye testified that he retrieved his handgun and shot at the intruders in order to protect himself and his daughter.[204]

The results in the raid of Cory Maye's house parallel those in John Adams' case: one individual was killed and another was charged with murder.[205] Ron Jones, a policeman involved in the raid, was killed by one of the shots.[206] Maye, a twenty-two year old father with no prior criminal record, was charged and convicted of murder.[207] Like Adams' case, lives presumably would have been saved if the officers had identified themselves prior to the entry in Maye's apartment.

Both situations were viewed as rare, catastrophic occurrences prior to Castle Doctrine enactments and prior to the Supreme Court's decision in *Hudson v. Michigan*. Nonetheless, these examples will become common events in the near future because of the interplay between the knock-and-announce rule and the Castle Doctrine. Nothing less than the human life is at stake.

VI. CONCLUSION

The Supreme Court's decision in *Hudson v. Michigan* will bolster violent encounters between police officers and homeowners. Although none of the Justices referenced the Castle Doctrine in their opinions, the importance of the doctrine is implicit when considering the practical effects of the

197. *Former Police Officer Acquitted Of Killing In Erroneous Drug Raid*, MEMPHIS COMMERCIAL APPEAL, June 10, 2001, at B9.

198. *Police Work To Repair Trust After Fatal Drug Raid Mixup*, MEMPHIS COMMERCIAL APPEAL, Dec. 13, 2000, at A2.

199. *Lebanon, Tenn., Police Raid Wrong House, Kill Innocent Man*, MEMPHIS COMMERCIAL APPEAL, Oct. 6, 2000, at B3.

200. Radley Balko, *The Case of Cory Maye*, REASON MAGAZINE, Oct. 2006, http://www.reason.com/news/show/36869.html.

201. *Id.*

202. *Id.*

203. *Id.*

204. *Id.*

205. *Id.*

206. Radley Balko, *The Case of Cory Maye*, REASON MAGAZINE, Oct. 2006, http://www.reason.com/news/show/36869.html.

207. *Id.*

case. By removing the incentive to comply with the knock-and-announce rule, the Court left homeowners vulnerable to surprise encounters with law enforcement officers. This vulnerability poses significant problems for both police officers and citizens because of the trigger-happy mindset created by the Castle Doctrine.

Thirty-five states currently remain "Castle Doctrine Free." Legislators in these states should be wary of the *Hudson* decision because of the prediction set forth in this Note. Instead of falling victim to powerful lobbying efforts, legislators should opt to protect human life by declining to provide citizens with a "shoot first, ask questions later" mentality. Citizens in current Castle Doctrine states may soon wish their lawmakers had done the same.